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**FILED**  
**DISTRICT COURT OF GUAM**

JUN 02 2008

**JEANNE G. QUINATA**  
**Clerk of Court**

5 *Attorneys for Defendant In Hyuk Kim aka Dominic*

6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **TERRITORY OF GUAM**

9 UNITED STATES OF AMERICA,

10 vs.

11 IN HYUK KIM aka DOMINIC,

12 Defendant.  
13

CRIMINAL CASE NO. CR07-00064

**DEFENDANT'S REPLY BRIEF PURSUANT  
TO COURT ORDER, IN SUPPORT OF  
APRIL 18, 2008 MOTION TO SUPPRESS**

14 Defendant, IN HYUK KIM, by and through counsel, LUJAN AGUIGUI & PEREZ, LLP,  
15 replies to the United States' Response to Defendant's May 27, 2008 Memorandum, as follows:  
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17 1. The government asks what the Defendant seeks to suppress. Defendant seeks to suppress  
18 oral and written statements purportedly made by him to agents for the government when he was  
19 apprehended on July 31, 2007, including statements made during the "Rule 11" phase of the  
20 interrogation. Defendant contends that all statements made by him beginning July 31, 2007 were  
21 pursuant to Rule 11. Additionally, for those statements the government acknowledges are subject  
22 to Rule 11, Defendant believes they include statements interconnected with those earlier made by  
23 him, were a continuation of his earlier efforts to resolve his case, and must be disclosed to ensure  
24 that the government does not attempt, inadvertently or otherwise, to introduce them during any  
25 trial of this matter.  
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1       2. The government argues that “[n]one of the statements Defendant made during his later  
2 interviews with ICE are going to be used by the government, ever.” Disclosure by the government  
3 to the Defendant of statements the government attributes to the Defendant will provide the  
4 Defendant with the opportunity to ensure that the government does not use his statements, ever,  
5 and enables the Defendant to impeach agents, potentially, concerning inaccurate statements they  
6 may attribute to him.  
7

8       3. The government argues that the Defendant “should not be given multiple bites at the same  
9 apple.” The government is the party which has taken multiple bites at the same apple,  
10 impermissibly filing a superseding indictment in retaliation for the Defendant’s exercise of his  
11 procedural, statutory and Constitutional rights. Additionally, the defense had not been advised  
12 that the government maintained information concerning further cooperation which had not been  
13 disclosed in discovery nor that the government considered such statements Rule 11 material. Had  
14 the government disclosed this at the inception of the originally indicted case and prior to the  
15 evidentiary hearings, the defense could have addressed the issue earlier. The government did not  
16 but once the defense was aware of the information and the government’s position concerning it,  
17 the defense had the duty to raise the issues now asserted.  
18

19       4. The government cites FRCrP 16(a)(1)(A) concerning statements the government intends  
20 to use at trial. However, the government did not address FRCrP 16(a)(1)(B) under which the  
21 government is obligated to disclose or make available for inspection Defendant’s statements,  
22 irrespective of whether or not the government intends to use such statements at trial.  
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5. It is not a “bootless exercise” as the government argues, for the Defendant to assert his discovery rights or argue motions including motions to suppress.

6. The government suggests “that it is time to cut off these endless and frivolous motions, and set this matter for trial.” The Defendant’s exercise of his procedural, statutory and Constitutional rights is not frivolous. Ultimately, this case should not be set for trial but instead dismissed with prejudice for the vindictive manner in which it has been prosecuted.

Dated this 2<sup>nd</sup> day of June, 2008.

**LUJAN AGUIGUI & PEREZ LLP**

By:

Prin 12/

**PETER C. PEREZ, ESQ.**

*Attorneys for Defendant In Hyuk Kim aka Dominic*

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